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EXAMINER

JAMAL, ALEXANDER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROBERT D. WACHEL

Appeal 2008-5842
Application 09/737,999
Technology Center 2600

Decided¹: April 28, 2009

Before MAHSHID D. SAADAT, ROBERT E. NAPPI, and
KEVIN F. TURNER, *Administrative Patent Judges*.

TURNER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134 from the final Rejection of claims 1-16. We have jurisdiction under 35 U.S.C. § 6(b). We AFFIRM.

¹ The two-month period of filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

Appellant's claimed invention relates to providing digital subscriber line (DSL) service and plain old telephone service (POTS), where the signals are split internally to a chassis and routed to separate card slots on separate connectors (Spec. 1:7-9; 4:13-20).

Claim 1 is illustrative of the invention and reads as follows:

1. A method of providing a digital subscriber line service and a plain old telephone service comprising:

connecting a communication I/O line to a chassis;

providing the digital subscriber line service onto the communication I/O line using a first circuit board in the chassis;

providing the plain old telephone service on the communication I/O line using a second circuit board in the chassis; and

splitting the digital subscriber line service from the plain old telephone service via a third circuit board on the chassis having passive components, said splitting occurring within the chassis without requiring a splitter external to the chassis at a customer premises.

(App. Br. 13, Claims Appendix).

The Examiner relies on the following prior art references to show unpatentability:

De Bruycker	6,272,219 B1	Aug. 7, 2001
Williamson	6,477,249 B1	Nov. 5, 2002
Alaimo	6,614,811 B1	Sep. 2, 2003

Claims 1-16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over De Bruycker, Alaimo, and Williamson.

Appellant argues that claims 1-13 were improperly rejected because the combination of references fails to teach or suggest splitting DSL service from POTS via a circuit board, where the splitting occurs within a chassis without requiring a splitter external to the chassis on a customer's premises (Br. 6-9). Appellant also argues that claims 14-16 were improperly rejected because the combination of references fails to teach or suggest providing separated DSL signals to a first hot-swappable circuit board and providing separated SLIC signals to a second hot-swappable circuit board, and there is no motivation provided in the references to combine them (Br. 9-10). The Examiner finds the cited references disclose all of the elements of the claims and the motivation to combine the references supplied in the rejection is proper (Ans. 8-9).

Appellant argues claims 1-13 together and claims 14-16 together. We therefore select claim 1 as representative of claims 1-13, and claim 14 as representative of claims 14-16. 37 C.F.R. § 41.37(c)(1)(vii).

Rather than reiterate all of the arguments of Appellant and the Examiner, reference is made to the Brief and the Answer for the respective details. Only those arguments actually made by Appellant have been considered in this decision. Arguments which Appellant could have made but chose not to make in the Brief have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

ISSUES

(i) Under 35 U.S.C. § 103(a), with respect to appealed claim 1, would one of ordinary skill in the art at the time of the invention have found it

obvious to combine De Bruycker, Alaimo, and Williamson to teach or suggest all of the elements of that claim?

(i) Under 35 U.S.C. § 103(a), with respect to appealed claim 14, would one of ordinary skill in the art at the time of the invention have found it obvious to combine De Bruycker, Alaimo, and Williamson to teach or suggest all of the elements of that claim?

FINDINGS OF FACT

1. The Specification discloses a system for providing DSL service and POTS. The system includes a chassis having transition and main cards coupled through a midplane. The transition cards are further connected to the network I/O (Spec. 4:1-20; Fig. 3, elements 100, 102, 104a-n, 106a-n, 108, 110).

2. Per claim 1, the splitting of the signals occurs within the chassis without requiring a splitter external to the chassis.

3. Per claim 14, the splitting of singles occurs in one or more transition cards having primarily passive components and signals are provided to separate hot-swappable circuit board.

4. De Bruycker discloses a method of providing DSL service and POTS through a chassis by splitting the combined signals through a splitter and providing the signals to communication lines, where the splitter may be a separate connector module. (Abstract; Col. 4, ll. 5-20 and 45-67; Figs. 5 and 6, elements 40, 60).

5. Alaimo discloses the use of a modular, multi-service telecommunications access device having separate peripheral cards that may be inserted into a chassis and connected via a backplane, where the cards

used may be hot-swappable (Abstract; Col. 1, ll. 44-63, col. 2, ll. 22-30, col. 3, ll. 45-62; col. 4, ll. 30-45; Figs. 2 and 3).

6. Williamson discloses a communications signal splitter for use with ADSL and POTS traffic that is implemented with passive components (Abstract; Col. 3, ll.15-25).

PRINCIPLES OF LAW

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d 1071, 1073 (Fed. Cir. 1988).

[T]here must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness' . . . [H]owever, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.

KSR Int'l Co. v. Teleflex Inc., 550 U.S. 398, 418 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

During examination, the claims must be interpreted as broadly as their terms reasonably allow. *In re Am. Acad. of Sci. Tech Center*, 367 F.3d 1359, 1369 (Fed. Cir. 2004). When the specification states the meaning that a term in the claim is intended to have, the claim is examined using that meaning, in order to achieve a complete exploration of the applicant's invention and its relation to the prior art. *In re Zletz*, 893 F.2d 319, 321-22 (Fed. Cir. 1989). “Even when guidance is not provided in explicit definitional format, the specification may define claim terms by implication such that the meaning may be found in or ascertained by a reading of the patent documents.”

Phillips v. AWH Corp., 415 F.3d 1303, 1321 (Fed. Cir. 2005) (citations and internal quotation marks omitted).

ANALYSIS

Appellant argues that claim 1 was improperly rejected because the combination of references fails to teach or suggest splitting DSL service from POTS via a circuit board, where the splitting occurs within a chassis without requiring a splitter external to the chassis at a customer premises (Br. 6-9). The Examiner finds the cited references disclose all of the elements of the claims (Ans. 8-9). We do not find Appellant's arguments to be compelling.

Appellant's arguments are largely conclusory, and provide little in the way of specifics. Appellant argues that De Bruycker does not specify using circuit boards, (Br. 8), but Alaimo discloses circuit boards, and we take no issue with the Examiner's finding that a circuit board is any device used to mount, support and connect the circuit components used for each peripheral card (Ans. 8-9). Appellant argues that Alaimo provides no teaching or suggestion of peripheral cards operating as a splitter, (Br. 8), but both De Bruycker and Williamson teach splitters (FF 4, 6), and providing the splitting operations on separate cards, per Alaimo, is one of the tenets of the rejection. We find no impediment to combine the teachings. Appellant acknowledges that Williamson discloses a splitter but seems to argue some element is not taught by Williamson, but no specifics are found in the Brief. All of the elements of claim 1 are taught or suggested by De Bruycker, Alaimo, and Williamson, and Appellant has proffered no reason to not

combine the teachings. As such, given the arguments presented by Appellant, we can find no error in the rejection of claim 1.

Appellant also argues that claim 14 was improperly rejected because the combination of references fails to teach or suggest providing separated DSL signals to a first hot-swappable circuit board and providing separated SLIC signals to a second hot-swappable circuit board, and there is no motivation provided in the references to combine (Br. 9-10). The Examiner finds the cited references disclose all of the elements of the claims and asserts that the motivation to combine the references supplied in the rejection is proper (Ans. 8-9). We do not find Appellant's arguments to be compelling.

With respect to claim 14, Appellant reiterates the arguments raised against the rejection of claim 1, which we have not found to be compelling *supra*. In addition, Appellant argues that the combination of De Bruycker, Alaimo, and Williamson fails to teach or suggest providing the separated signals to separate hot-swappable circuit boards. Given that Alaimo discloses that the circuit boards can be hot-swappable, (FF 5), and we have concurred with the Examiner's finding that the signals may be distributed to separate cards *supra*, we cannot agree with Appellant's argument.

Additionally, Appellant argues that the combination of De Bruycker, Alaimo, and Williamson is not motivated by any disclosure contained in those references and that only impermissible hindsight would guide the combination (Br. 10). Specifically, Appellant argues that there is no suggestion to implement one of the peripheral cards of Alaimo as a splitter. We note that this the same argument raised above, and we find it no more compelling when raised against motivations to combine the references. We

agree with the Examiner, (Ans. 9), that the motivations cited in the rejection are sufficient and proper, and they do not improperly rely on impermissible hindsight. Appellant has failed to proffer any rationale for why the references could not have been combined and we can find no error in the rejection of claim 14.

CONCLUSION

The decision of the Examiner rejecting claims 1-16 under 35 U.S.C. § 103(a) as being unpatentable over De Bruycker, Alaimo, and Williamson is affirmed.

DECISION

The Examiner's rejection of claims 1-16 before us on appeal is AFFIRMED.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

ack

cc:

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